

# HOUSE . . . . . No. 1382

By Mr. Kulik of Worthington, petition of Geraldine Creedon and others for legislation to amend the conservation restrictions and agricultural preservation statutes. Environment, Natural Resources and Agriculture.

## The Commonwealth of Massachusetts

### PETITION OF:

Geraldine Creedon	Robert S. Creedon, Jr.
George N. Peterson, Jr.	Gale D. Candaras
Michael E. Festa	Paul Kujawski
Jennifer M. Callahan	Richard T. Moore
Pamela P. Resor	Michael J. Rodrigues
Frank I. Smizik	John W. Scibak
J. James Marzilli, Jr.	Michael. F. Rush
Douglas W. Petersen	Stephen Kulik
Ruth B. Balser	Bradley H. Jones, Jr.
Anne M. Paulsen	

In the Year Two Thousand and Five.

### AN ACT AMENDING THE CONSERVATION RESTRICTIONS AND AGRICULTURAL PRESERVATION STATUTES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1     SECTION 1. Section 23 of chapter 20 of the General Laws, as  
2     appearing in section 62 of chapter 26 of the acts of 2003, is  
3     hereby amended by striking out the third sentence and inserting in  
4     place thereof the following 3 sentences:— Title to agricultural  
5     preservation restrictions shall be held in the name of the common-  
6     wealth, except that a city or town in which the land is located, or a  
7     charitable corporation, charitable trust or land bank, which pro-  
8     vides assistance satisfactory to the agricultural lands preservation  
9     committee including, but not limited to, providing funds or por-  
10    tions thereof toward the purchase of the restriction, the providing

11 of legal services or monitoring and enforcement of the preserva-  
12 tion restriction, may hold title to the land jointly with the com-  
13 monwealth. The commissioner of the department of agricultural  
14 resources may issue a letter of intent requesting the assistance of a  
15 non-profit organization as defined in subsection (c)(3) of section  
16 501 of the United States Internal Revenue Code, in acquiring  
17 rights to certain agricultural land. If the organization acquires the  
18 rights, it may sell them to the commissioner based on a purchase  
19 agreement.

1 SECTION 2. Said section 23 of said chapter 20, as so  
2 appearing, is hereby further amended by inserting, at the end of  
3 the first paragraph, the following sentence:— Notwithstanding  
4 any general or special law to the contrary, payments made to  
5 acquire agricultural preservation restrictions as defined in section  
6 31 of chapter 184 and provided for in this chapter may, upon the  
7 election of the person conveying such restriction, be made in  
8 approximately equal installment payments spanning not more than  
9 5 years.

1 SECTION 3. Section 5A of chapter 79 of the General Laws, as  
2 appearing in the 2000 Official Edition, is hereby amended by  
3 inserting, following the words “or antiquarian interest the fol-  
4 lowing:—”, and no property protected by a preservation restric-  
5 tion under sections 31 through 33 of chapter 184”.

1 SECTION 4. Section 5B of said chapter 79, as so appearing, is  
2 hereby amended by inserting in the title, following the word  
3 “Agricultural”, the words “and Conservation”; and by inserting in  
4 the first sentence, following the words “one hundred and twenty-  
5 eight” the following:— “and no property protected by a conserva-  
6 tion restriction, preservation restriction, agricultural preservation  
7 restriction, or watershed preservation restriction under sections 31  
8 through 33 of chapter 184”.

1 SECTION 5. Said section 5B of said chapter 79, as so  
2 appearing, is hereby further amended by inserting in the first sen-  
3 tence, following the words “as so defined,” the following:— “or  
4 not so protected under sections 31 through 33 of chapter 184,”.

1     SECTION 6. Section 31 of chapter 184 of the General Laws, as  
2     appearing in the 2002 Official Edition, is hereby amended by  
3     deleting from the first sentence in the first paragraph the words  
4     “either in perpetuity or for a specified number of years” and by  
5     inserting at the end of said paragraph the following sentence:—

6     Such conservation restrictions shall be in perpetuity or for a  
7     specified number of years and shall only be released as provided  
8     in section 32 of chapter 184.

1     SECTION 7. Said section 31 of said chapter 184, as so  
2     appearing, is hereby further amended by inserting at the end of the  
3     second paragraph the following sentence:—

4     Such preservation restrictions shall be in perpetuity or for a  
5     specified number of years and shall only be released as provided  
6     in section 32 of Chapter 184.

1     SECTION 8. Said section 31 of said chapter 184, as so  
2     appearing, is hereby further amended by striking out the first two  
3     sentences of the third paragraph and replacing them with the fol-  
4     lowing two sentences:—

5     An agricultural preservation restriction means a right, whether  
6     or not stated in the form of a restriction, easement, covenant or  
7     condition, in any deed, will or other instrument executed by or on  
8     behalf of the owner of the land appropriate to retaining land or  
9     water areas predominantly in their agricultural forming or forest  
10    use, to forbid or limit any or all acts or uses detrimental to such  
11    retention of the land for agricultural use. Such agricultural preser-  
12    vation restrictions shall be in perpetuity and shall only be released  
13    as provided in section 32 of Chapter 184.

1     SECTION 9. Said section 31 of said chapter 184, as so  
2     appearing, is hereby further amended by striking out the first two  
3     sentences of the fourth paragraph and replacing them with the fol-  
4     lowing two sentences:—

5     A watershed preservation restriction means a right, whether or  
6     not stated in the form of a restriction, easement, covenant or con-  
7     dition, in any deed, will or other instrument executed by or on  
8     behalf of the owner of the land appropriate to retaining land pre-  
9     dominantly in such condition to protect the water supply or poten-

10 tial water supply of the commonwealth, to forbid or limit any or  
11 all acts or uses detrimental to such watershed. Such watershed  
12 preservation restrictions shall be in perpetuity and shall only be  
13 released as provided in section 32 of Chapter 184.

1 SECTION 10. The first paragraph of section 32 of chapter 184  
2 of the General Laws, as appearing in the 2002 Official Edition, is  
3 hereby amended by adding the following sentence:— The  
4 common law doctrine of merger shall not apply to any restrictions  
5 approved as provided in this paragraph.

1 SECTION 11. Said section 32 of said chapter 184, as so  
2 appearing, is hereby further amended by striking out the second  
3 and third paragraphs and inserting in place thereof the following 2  
4 paragraphs:—

5 Conservation, preservation, agricultural preservation, water-  
6 shed preservation and affordable housing restrictions are interests  
7 in land, and may be acquired by any governmental body or chari-  
8 table corporations and trusts which have power to acquire inter-  
9 ests in land, in the same manner as it may acquire other interests  
10 in land. The conservation, preservation, agricultural preservation,  
11 watershed preservation and affordable housing restrictions may be  
12 enforced by injunction or other proceeding and shall entitle repre-  
13 sentatives of the holder to enter the land in a reasonable manner  
14 and at reasonable times to assure compliance. Restrictions may be  
15 released, in whole or in part, by the holder for consideration, if  
16 any, as the holder may determine, in the same manner as the  
17 holder may dispose of land or other interests in land, but only  
18 after a public hearing upon reasonable public notice, by the gov-  
19 ernmental body holding the restriction, or, if held by a charitable  
20 corporation or trust, by the mayor, or in cities having a city man-  
21 ager, the city manager, the city council of the city or the selectmen  
22 of the town, whose approval shall be required, and in the case of a  
23 restriction requiring approval by the secretary of environmental  
24 affairs, the Massachusetts historical commission, the commis-  
25 sioner of agricultural resources, the director of urban parks in the  
26 department of conservation and recreation, or the director of the  
27 department of housing and community development, only with  
28 like approval of the release. Conservation, agricultural preserva-

29 tion and watershed preservation restrictions, in addition to other  
30 requirements of this section, may be released, in whole or in part,  
31 only with approval of two-thirds of both branches of the general  
32 court, by a vote taken by the yeas and nays, that the restriction  
33 shall be released for the public good.

34 No restriction that has been purchased with state funds or  
35 which has been granted in consideration of a loan or grant made  
36 with state funds shall be released unless it is repurchased by the  
37 land owner at its then current fair market value. Funds so received  
38 shall revert to the fund sources from which the original purchase,  
39 loan or grant was made, or, lacking such sources, shall be made  
40 available to acquire similar interests in other land. Agricultural  
41 preservation restrictions shall be released by the holder only if the  
42 land is no longer considered suitable for agricultural or horticul-  
43 tural purposes and unless two-thirds of both branches of the gen-  
44 eral court, by a vote taken by yeas and nays, vote that the  
45 restrictions shall be released for the public good. Watershed  
46 preservation restrictions shall be released by the holder only if the  
47 land is deemed by the commissioner of conservation and recre-  
48 ation and the secretary of environmental affairs to no longer be of  
49 any importance to the water supply or potential water supply of  
50 the commonwealth and unless two-thirds of both branches of the  
51 general court, by a vote taken by yeas and nays, vote that the  
52 restrictions shall be released for the public good.

1 SECTION 12. Said section 32 of said chapter 184, as so  
2 appearing, is hereby further amended by striking out the seventh  
3 paragraph and inserting in place thereof the following para-  
4 graph:—

5 Nothing in this section shall prohibit the department of  
6 telecommunications and energy, without the need for approval of  
7 the general court or of the state authority which approves any  
8 affected restriction, from authorizing the taking of easements for  
9 the purpose of utility services, or the granting of exemptions from  
10 any affected restrictions with respect to such easements, provided  
11 that: (a) said department shall require the minimum practicable  
12 interference with farming operations or other purposes of the  
13 affected restriction with determination to be made after a public  
14 hearing, which, in the event a public hearing concerning the same

15 land is being or will be conducted under chapter 164, section 75C,  
16 shall be consolidated with such hearing, and of which all holders  
17 of the affected restriction have been given reasonable prior written  
18 notice; (b) the applicant has obtained, or subsequently shall  
19 obtain, all necessary licenses, permits, approvals and other autho-  
20 rizations from the appropriate state agencies; and (c) whether said  
21 department proceeds by authorizing a taking or granting an  
22 exemption, the applicant shall, under chapter 79, compensate the  
23 owner of the property and each restriction holder to the extent  
24 each interest may warrant.

1 SECTION 13. Sections 3 through 12 of this act shall apply to  
2 all restrictions authorized under sections 31 and 32 of chapter 184  
3 of the General Laws that exist on the effective date of this act.